SUMMONS ISSUED

CV-13 4395

FILED
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U.S. DISTRICT COURT E.D.N.Y.
★ AUG 02 2013 ★
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABRAHAM MENDELSOHN
on behalf of himself and
all other similarly situated consumers

Plaintiff,

-against-

CRAIG STUART LANZA

Defendant.

KORMAN, J.
SCANLON, M.J.

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff Abraham Mendelsohn seeks redress for the illegal practices of Craig Stuart Lanza concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et *seq.* ("FDCPA").

Parties

2. Plaintiff is a citizen of the State of New York who resides within this District.

3. Plaintiff is a consumer as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that Defendant sought to collect from Plaintiff a consumer debt.

4. Upon information and belief, Defendant's principal place of business is located in Brooklyn, New York.

5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

6. Defendant is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

Jurisdiction and Venue

7. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district.

Allegations Particular to Abraham Mendelsohn

9. Upon information and belief, on a date better known by Defendant, Defendant began to attempt to collect an alleged consumer debt from the Plaintiff.

10. On or about July 9, 2013, Defendant sent the Plaintiff a collection letter/Statement for Judgment seeking to collect a balance allegedly incurred for personal purposes.

11. The said letter stated in pertinent part as follows: "As of the date of this letter, you owe an unpaid balance of $355,156.26. Because of court mandated interest of 9% the amount due will increase. Hence, if you pay the amount shown above within 10 days of receiving this notice we will waive any additional interest accrued. Unless you contact my office within 15 days after receiving this notice we will contact the Sheriff's office to begin action against your property."

12. Upon information and belief, the said letter was the Defendant initial communication with the Plaintiff.

13. The said letter is completely devoid of the litany of warnings and notices required by 15 U.S.C. §§ 1692g and 1692e(11).

14. The said letter fails to, inter alia, adequately advise the Plaintiff of his rights, because the thirty (30) day validation notice required by 15 U.S.C. §1692(g) was not placed anywhere in the demand for payment of the alleged debt.

15. The language in the aforementioned letter violates 15 U.S.C. § 1692(g), because it contradicts the requirement that the Plaintiff be advised of and given a thirty (30) day period in which to dispute the bill.

16. The aforementioned letter fails to disclose clearly that the Defendant was attempting to collect a debt, and that any information obtained would be used for that purpose, as required by 15 U.S.C. §1692(e)(11).

17. The Defendant failed to give Plaintiff notice of his rights as mandated by 15 U.S.C. §§ 1692g and 1692e(11) within five (5) days of Defendant's said initial communication to the Plaintiff.

18. Had the Plaintiff been given notice of his rights pursuant to 15 U.S.C. § 1692g, he would have promptly made such dispute, requested verification, settled and/or made payment of said amount demanded.

19. The Defendant, in attempting to collect from the Plaintiff the aforementioned alleged past due debt, employing, inter alia, the acts and/or omissions described above, violated:

i. 15 U.S.C. §1692e generally, and specifically, 15 U.S.C. § 1692e(10) and 1692e(11) by Defendant's July 9, 2013 initial communication, as described above;

ii. 15 U.S.C. § 1692f generally, and specifically 15 U.S.C. §1692g(a), by failing to advise the Plaintiff of any of his rights as required by § 1692g in Defendant's initial communication or within five (5) days of said initial communication to the Plaintiff in connection with the collection of the aforementioned alleged debt.

20. Upon information and belief, other persons hold the same or similar claims against the Defendant, for the Defendant's failure to notify them of their rights as mandated by 15 U.S.C. §1692g, within five (5) days after the initial communications substantially similar to those received by the Plaintiff from the Defendant in the collection of consumer debts within the State of New York.

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by Plaintiff on behalf of himself and the members of a class, as against the Defendant.

21. Plaintiff re-states, re-alleges, and incorporates herein by reference, paragraphs one (1) through twenty (20) as if set forth fully in this cause of action.

22. This cause of action is brought on behalf of Plaintiff and the members of a class.

23. The class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter (a) bearing the Defendant's letterhead in substantially the same form as the letter sent to the Plaintiff on or about July 9, 2013; (b) the collection letter was sent to a consumer seeking payment of a personal debt purportedly owed to Wachovia Bank, National Association; and (c) the collection letter was not returned by the postal service as undelivered; and (d) the Defendant violated 15 U.S.C. §§ 1692e, 1692e(10), 1692e(11), 1692f, and 1692g(a), for Defendant's intentional violation of the mandatory disclosure requirements of the FDCPA.

24. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

(A) Based on the fact that a form collection letter is at the heart of this litigation, the class is so numerous that joinder of all members is impracticable.

(B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA.

(C) The only individual issue is the identification of the consumers who received such collection letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of Defendant.

(D) The claims of the Plaintiff are typical of those of the class members. All are based on the same facts and legal theories.

(E) The Plaintiff will fairly and adequately represent the class members' interests. The Plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The Plaintiff's interests are consistent with those of the members of the class.

25. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. § 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

26. If the facts are discovered to be appropriate, the Plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

27. Collection attempts, such as those made by the Defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

Violations of the Fair Debt Collection Practices Act

28. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.

29. Because the Defendant violated of the Fair Debt Collection Practices Act, the Plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully request that this Court enter judgment in his favor and against the Defendant and award damages as follows:

(a) Statutory and actual damages provided under the FDCPA, 15 U.S.C. § 1692(k);

(b) Attorney fees, litigation expenses and costs incurred in bringing this action; and

(c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Cedarhurst, New York
August 1, 2013

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Plaintiff requests trial by jury on all issues so triable.

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CRAIG STUART LANZA

ATTORNEY AT LAW
26 Court Street, Suite 1200
Brooklyn, New York 11242

Abraham Mendelsohn
1809 51st Street
Brooklyn, NY 11204

July 9, 2013

Re: Statement for Judgment
Index No 7909/2010
Wachovia Bank, National Association v. Abraham Mendelsohn aka Abraham Mendelson
Judgment Amount: $355,156.26

Dear Mr. Mendelsohn:

My firm represents FC Notes Svc, LLC who was assigned judgment from the above named creditor. FC Notes Svc, LLC has placed this matter with our office for collection. To resolve this matter and comply with the Judgment by Confession, your payment in full should be made to payable to the above named creditor and mailed to this office. If you are unable to pay the balance in full, but would like to make payment arrangements, please contact our office with a proposed repayment plan.

As of the date of this letter, you owe an unpaid balance of $355,156.26. Because of court mandated interest of 9% the amount due will increase. Hence, if you pay the amount shown above within 10 days of receiving this notice we will waive any additional interest accrued.

Unless you contact my office within 15 days after receiving this notice we will contact the Sheriff's office to begin action against your property.

Sincerely,

Megan Kearney